



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

21 October 2016

Superannuation Tax Reform

Retirement Income Policy Division

Email: superannuation@treasury.gov.au

Re. Superannuation reform package - tranche three

Dear Sir/Madam,

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback on the third tranche of superannuation reforms announced in the 2016 federal budget. The introduction of the transfer balance cap (as detailed in the second tranche of the superannuation reform package) will limit the benefits individuals such as child beneficiaries can keep in super. That cap will also affect individuals who suffer loss from their retirement income streams due to fraud or dishonesty.

To protect such individuals, we have recommended that certain contributions not be counted towards a cap that is the subject matter of the third tranche of the reform package, the non-concessional contributions cap. If you have any queries or comments, please do not hesitate to contact me at policy@fpa.com.au or on 02 9220 4500.

Yours sincerely

Dimitri Diamantes

Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 11,000 members and affiliates of whom 9,000 are practising financial planners and 5,500 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first "policy pillar" is to act in the public interest at all times.
 - In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and superannuation for our members – years ahead of FOFA.
 - We have an independent conduct review panel, Chaired by Mark Vincent, dealing with investigations and complaints against our members for breaches of our professional rules.
 - The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules that explain and underpin professional financial planning practices. This is being exported to 24 member countries and the 150,000 CFP practitioners that make up the FPSB globally.
 - We have built a curriculum with 17 Australian Universities for degrees in financial planning. As at the 1st July 2013 all new members of the FPA will be required to hold, as a minimum, an approved undergraduate degree.
 - CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional bodies, eg CPA Australia.
 - We are recognised as a professional body by the Tax Practitioners Board
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SUPERANNUATION REFORM PACKAGE – THIRD TRANCHE

FPA submission to:
Treasury

21 October 2016

INTRODUCTION

The introduction of the transfer balance cap will limit the benefits individuals such as child beneficiaries can keep in super. That cap will also affect individuals who suffer loss from their retirement income streams due to fraud or dishonesty. The non-concessional contributions (NCC) cap regime should be designed with the challenges posed by the transfer balance cap in mind. To protect such individuals, we have recommended that certain contributions not be counted towards the NCC cap.

Non-concessional contributions cap

Total superannuation balance

General

Especially given the tightening of the NCC cap, it is crucial to ensure that the scope of exemptions is appropriate. We believe that, in addition to existing exemptions, contributions made for the purpose of replenishing losses giving rise to replenishment debits under Sub-division 294-D should be excluded from the definition of NCC (and concessional contributions). This measure would allow contributions made on behalf of members (including contributions attributable to compensation for such losses) to be made without having adverse consequences in relation to the taxation of the member's current or potential contributions.

Alternative proposal

We recommend that contributions made for the purpose of replenishing losses giving rise to replenishment debits under Sub-division 294-D be excluded from the definition of NCC (and concessional contributions). We note that in our submission on the second tranche of draft legislation supporting the superannuation reforms, we have proposed that replenishment debits be generated in a broader range of circumstances, including fraud or dishonesty likely to result in a conviction; market crashes; and where the minister makes a relevant declaration.

Reductions

Not only does the reform to the NCC regime reduce, in general, the NCC cap, but also further reduces that cap where the member's total superannuation balance is close to or exceeds the transfer balance cap. We are concerned that, apart from structured settlements and non-commutable excess transfer balance amounts, the legislation does not modify the general definition of total superannuation balance.

We believe that it is also appropriate to disregard cap increment amounts (i.e. of child recipients of superannuation income streams paid due to the death of a parent) for the purpose of determining the child's NCC cap. While the income stream balance won't restrict the child from making contributions in the year the income stream commences, there may be situations where it is appropriate to make later contributions to the child's super.

Disabled children are likely to need more than the transfer balance cap (which appears to be designed to provide for the normal retirement period) to provide for the rest of their lives. Therefore, disregarding the cap increment for the purpose of determining the child's NCC cap is appropriate, even though this rule would do nothing to limit the ability to build a total superannuation balance that exceeds or further exceeds the transfer balance cap.

For non-disabled children, the purpose of a superannuation income stream paid on the death of a parent is to provide benefits into the child's early adulthood (but not beyond). The benefits are earmarked for early adult life and not for retirement. Further, the income stream needs to be commuted by when the child turns age 18 (or if financially dependent on the parent, age 25). Therefore, we know that children generally won't have such an income stream in super once they turn 25. In other words, we know that the purpose of super benefits making up the income stream the child receives on the parent's death won't become a retirement purpose. Given this knowledge, it is appropriate to disregard the cap increment amounts. It is useful to have this flexibility to enable children to maximise their retirement benefits by maximising their contributions to super.

Alternative proposal

We recommend that a child's cap increments not be counted towards the child's total superannuation balance. The exemption might be especially useful for a disabled child as it would enhance the opportunities for providing benefits for the rest of the child's life.

We note that in our submission on the second tranche of the reform package we stated that our preferred option is that where a retirement pension is created due to the death of a super member, the retirement pension is exempted from the transfer balance cap (just as structured settlements are). We also stated that, alternatively, cashing rules for death benefits should be amended to allow death benefits to be transferred into the accumulation phase as unrestricted non-preserved benefits; and that, in either case, the death benefit amount should be exempt from the beneficiary's transfer cap balance. However, if these recommendations aren't proceeded with, children (especially disabled children) would have a particularly strong need to be able to contribute to super without adverse consequences.